

SENATE BILL 953

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CF HB 1318

By: **Senators Exum, Edwards, and Kittleman**

Introduced and read first time: February 18, 2010

Assigned to: Rules

Re-referred to: Finance, February 26, 2010

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 31, 2010

CHAPTER _____

1 AN ACT concerning

2 **Workers' Compensation – ~~Death~~ Benefits – Dependency**

3 FOR the purpose of repealing a certain provision of law that allows dependents of
4 certain employees to receive workers' compensation benefits awarded for certain
5 occupational diseases in addition to certain retirement benefits; altering the
6 authority of the Workers' Compensation Commission to make certain
7 determinations of dependency; altering a provision of law that specifies that
8 certain surviving spouses and individuals are not entitled to certain death
9 benefits; altering the provisions relating to the calculation of death benefits for
10 individuals who are wholly or partly dependent; requiring an employer or its
11 insurer to pay certain death benefits to certain dependents for a certain period
12 of time; specifying the calculation of certain death benefits; specifying the
13 minimum amount of certain death benefits; specifying the minimum amount of
14 time for the payment of certain death benefits; providing an exception to the
15 time limitation for certain dependents who are incapable of self-support under
16 certain circumstances; providing for the termination of certain death benefits
17 under certain circumstances; providing an exception to the termination of
18 certain death benefits for certain children under certain circumstances;
19 providing the amount of death benefits to certain dependents who are neither a
20 dependent spouse nor a dependent child; providing for an annual adjustment in
21 a certain manner of a certain death benefit; specifying that the Commission has
22 continuing jurisdiction under certain circumstances; increasing the amount of
23 certain funeral expenses that the employer or its insurer is required to pay;
24 requiring the Workers' Compensation Commission to reconvene a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 workgroup; requiring the Commission to direct a certain workgroup to study
 2 certain provisions; requiring the Commission to report certain findings and
 3 recommendations by a certain date to certain committees; providing for the
 4 application of this Act; making stylistic changes; and generally relating to
 5 workers' compensation ~~death~~ benefits for dependents of covered employees.

6 BY repealing and reenacting, without amendments,
 7 Article – Labor and Employment
 8 Section 9–678
 9 Annotated Code of Maryland
 10 (2008 Replacement Volume and 2009 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article – Labor and Employment
 13 Section 9–503(e), 9–679, 9–680, 9–681, 9–683, and 9–689
 14 Annotated Code of Maryland
 15 (2008 Replacement Volume and 2009 Supplement)

16 BY repealing
 17 Article – Labor and Employment
 18 Section 9–682
 19 Annotated Code of Maryland
 20 (2008 Replacement Volume and 2009 Supplement)

21 BY adding to
 22 Article – Labor and Employment
 23 Section 9–682
 24 Annotated Code of Maryland
 25 (2008 Replacement Volume and 2009 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article – Labor and Employment**

29 9–503.

30 (e) (1) Except as provided in paragraph (2) of this subsection, any paid
 31 firefighter, paid fire fighting instructor, sworn member of the Office of the State Fire
 32 Marshal, paid police officer, paid law enforcement employee of the Department of
 33 Natural Resources, a park police officer or employee of the Maryland–National Capital
 34 Park and Planning Commission, deputy sheriff of Montgomery County, deputy sheriff
 35 of Baltimore City, Montgomery County correctional officer, deputy sheriff of Prince
 36 George's County, or Prince George's County correctional officer who is eligible for
 37 benefits under subsection (a), (b), (c), or (d) of this section [or the dependents of those
 38 individuals] shall receive the benefits in addition to any benefits that the individual

1 [or the dependents of the individual are] IS entitled to receive under the retirement
2 system in which the individual was a participant at the time of the claim.

3 (2) The benefits received under this title shall be adjusted so that the
4 weekly total of those benefits and retirement benefits does not exceed the weekly
5 salary that was paid to the paid law enforcement employee of the Department of
6 Natural Resources, a park police officer or employee of the Maryland–National Capital
7 Park and Planning Commission, firefighter, fire fighting instructor, sworn member of
8 the Office of the State Fire Marshal, police officer, deputy sheriff, or Prince George’s
9 County or Montgomery County correctional officer.

10 9–678.

11 A dependent of a covered employee who is entitled to compensation for the
12 death of the covered employee resulting from an accidental personal injury or
13 occupational disease shall be paid compensation in accordance with this Part XII of
14 this subtitle.

15 9–679.

16 (A) Except as otherwise provided in this subtitle, the Commission shall
17 determine all questions of [partial or total] dependency in accordance with the facts of
18 each case that existed:

19 (1) at the time of the occurrence of the accidental personal injury that
20 caused the death of the covered employee; or

21 (2) on the date of disablement from the occupational disease that
22 caused the death of the covered employee.

23 (B) **NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE**
24 **COMMISSION MAY DETERMINE THE QUESTION OF DEPENDENCY OF A CHILD OF**
25 **A COVERED EMPLOYEE BORN AFTER:**

26 (1) **THE TIME OF THE OCCURRENCE OF THE ACCIDENTAL**
27 **PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE;**

28 (2) **THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL**
29 **DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE; OR**

30 (3) **THE DEATH OF THE COVERED EMPLOYEE RESULTING FROM**
31 **THE ACCIDENTAL PERSONAL INJURY OR OCCUPATIONAL DISEASE.**

32 9–680.

1 **[(a)]** The surviving spouse of a **DECEASED** covered employee whose death was
2 caused by an accidental personal injury or an occupational disease is not entitled to
3 **DEATH** benefits under this title if~~]:~~

4 (1) the surviving spouse deserts the covered employee for more than 1
5 year before the time of the occurrence of the accidental personal injury or the date of
6 disablement from the occupational disease;

7 (2) the surviving spouse deserts the covered employee at any time
8 after the time of the occurrence of the accidental personal injury or the date of
9 disablement from the occupational disease; or

10 (3)~~]~~ the surviving spouse and the covered employee~~]:~~

11 (i)~~]~~ were married after the time of the occurrence of the
12 accidental personal injury or the date of disablement from the occupational disease~~];~~
13 and

14 (ii) do not have any dependent children].

15 **[(b)]** (1) Except as provided in paragraph (2) of this subsection, an
16 individual is not entitled to compensation due to the death of a covered employee from
17 an occupational disease if the individual became dependent on the covered employee
18 after the beginning of the 1st compensable disability of the covered employee resulting
19 from the occupational disease.

20 (2) The prohibition against compensation in paragraph (1) of this
21 subsection does not apply to a child of the deceased covered employee born:

22 (i) after the beginning of the 1st compensable disability of the
23 covered employee resulting from the occupational disease; and

24 (ii) of a marriage that existed at the beginning of the disability.]

25 9-681.

26 (a) If there are individuals who were **[wholly]** dependent on a deceased
27 covered employee at the time of death resulting from an accidental personal injury or
28 occupational disease, the employer or its insurer shall pay death benefits in
29 accordance with this section.

30 **[(b)]** (1) Except as provided in paragraph (2) of this subsection, the death
31 benefit payable under this section shall equal two-thirds of the average weekly wage
32 of the deceased covered employee, but may not:

33 (i) exceed the State average weekly wage; or

1 (ii) be less than \$25.

2 (2) If the average weekly wage of the deceased covered employee was
3 less than \$25 at the time of the accidental personal injury or the last injurious
4 exposure to the hazards of the occupational disease, the weekly death benefit payable
5 under this section shall equal the average weekly wage of the deceased covered
6 employee.

7 (c) Except as otherwise provided in this section, the employer or its insurer
8 shall pay the weekly death benefit:

9 (1) for the period of total dependency; or

10 (2) until \$45,000 has been paid.

11 (d) If a surviving spouse who was wholly dependent at the time of death
12 continues to be wholly dependent after \$45,000 has been paid, the employer or its
13 insurer shall continue to make payments to the surviving spouse at the same weekly
14 rate during the total dependency of the surviving spouse.

15 (e) (1) If a surviving spouse who is wholly dependent at the time of death
16 becomes wholly self-supporting before \$45,000 has been paid, the employer or its
17 insurer shall continue to pay death benefits until \$45,000 has been paid.

18 (2) If a surviving spouse who is wholly dependent at the time of death
19 becomes partly self-supporting, the employer or its insurer shall continue to make
20 payments to the surviving spouse in accordance with § 9-682 of this subtitle.

21 (f) (1) Except as provided in paragraph (2) of this subsection, if a
22 surviving spouse who is wholly dependent remarries, payment to the surviving spouse
23 shall stop on the date of remarriage, even if \$45,000 has not been paid.

24 (2) If a surviving spouse who is wholly dependent remarries and does
25 not have dependent children at the time of the remarriage, the employer or its insurer
26 shall continue to make payments to the surviving spouse for 2 years after the date of
27 the remarriage.

28 (g) If a surviving child continues to be wholly dependent after the total
29 amount of \$45,000 has been paid, the employer or its insurer shall continue to make
30 payments at the same weekly rate during the total dependency of the surviving child.

31 (h) Except as provided in subsection (i) of this section, if a child who is wholly
32 dependent at the time of death becomes wholly or partly self-supporting, the employer
33 or its insurer shall continue to pay death benefits until \$45,000 has been paid.

1 (i) (1) Except as provided in paragraphs (2) and (3) of this subsection, the
2 employer or its insurer shall continue to make payments to, or for the benefit of, a
3 surviving child until the child reaches 18 years of age.

4 (2) The employer or its insurer shall continue to make payments to, or
5 for the benefit of, a child who is 18 years old or older for the period of dependency if
6 the child is:

7 (i) wholly dependent on the deceased covered employee; and

8 (ii) incapable of self-support because of mental or physical
9 disability or other sufficient reason as determined by the Commission.

10 (3) The employer or its insurer shall continue to make payments to, or
11 for the benefit of, a child who is 18 years old or older for up to 5 years after reaching
12 the age of 18 if:

13 (i) the child is attending school on a full-time basis; and

14 (ii) the school offers an educational program or a vocational
15 training program, that is accredited or approved by the State Department of
16 Education.

17 (j) The Commission has continuing jurisdiction to:

18 (1) determine whether a surviving spouse or child has become wholly
19 or partly self-supporting;

20 (2) suspend or terminate payments of compensation; and

21 (3) reinstate payments of compensation that have been suspended or
22 terminated.]

23 **(B) (1) BEGINNING ON THE DATE OF DEATH OF A DECEASED**
24 **COVERED EMPLOYEE AND CONTINUING FOR A PERIOD OF 144 MONTHS THE**
25 **EMPLOYER OR ITS INSURER SHALL PAY DEATH BENEFITS, AS CALCULATED IN**
26 **THIS SECTION, TO THE DEPENDENTS OF THE DECEASED COVERED EMPLOYEE.**

27 **(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,**
28 **DEATH BENEFITS SHALL BE PAID AT THE RATE OF TWO-THIRDS OF THE**
29 **DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE AT THE TIME OF**
30 **THE OCCURRENCE OF THE ACCIDENTAL PERSONAL INJURY THAT CAUSED THE**
31 **DEATH OF THE COVERED EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM**
32 **THE OCCUPATIONAL DISEASE THAT CAUSED THE DEATH OF THE COVERED**
33 **EMPLOYEE, NOT TO EXCEED THE STATE AVERAGE WEEKLY WAGE.**

1 **(3) THE AVERAGE WEEKLY WAGE OF ALL DEPENDENTS AND THE**
2 **DECEASED COVERED EMPLOYEE'S AVERAGE WEEKLY WAGE SHALL BE**
3 **COMBINED TO DETERMINE THE FAMILY INCOME.**

4 **(4) THE DECEASED COVERED EMPLOYEE'S INCOME SHALL BE**
5 **DIVIDED BY THE FAMILY INCOME TO DETERMINE THE PERCENTAGE OF THE**
6 **FAMILY INCOME EARNED BY THE DECEASED COVERED EMPLOYEE.**

7 **(5) THE PERCENTAGE OF THE FAMILY INCOME EARNED BY THE**
8 **DECEASED COVERED EMPLOYEE SHALL BE MULTIPLIED BY THE DEATH**
9 **BENEFIT, AS CALCULATED IN PARAGRAPH (2) OF THIS SUBSECTION, TO**
10 **DETERMINE THE AMOUNT PAYABLE, COLLECTIVELY, TO ALL DEPENDENTS.**

11 **(6) IF THE AVERAGE WEEKLY WAGE OF THE DECEASED COVERED**
12 **EMPLOYEE WAS LESS THAN \$100 AT THE TIME OF THE OCCURRENCE OF THE**
13 **ACCIDENTAL PERSONAL INJURY THAT CAUSED THE DEATH OF THE COVERED**
14 **EMPLOYEE OR ON THE DATE OF DISABLEMENT FROM THE OCCUPATIONAL**
15 **DISEASE THAT CAUSED THE DEATH OF THE COVERED EMPLOYEE, THE WEEKLY**
16 **DEATH BENEFIT PAID UNDER THIS SECTION SHALL EQUAL THE AVERAGE**
17 **WEEKLY WAGE OF THE DECEASED COVERED EMPLOYEE UP TO \$100 PER WEEK.**

18 **(7) (I) THIS PARAGRAPH APPLIES TO A DEATH BENEFIT PAID**
19 **TO A DEPENDENT OF A DECEASED COVERED EMPLOYEE OF A COUNTY,**
20 **MUNICIPAL CORPORATION, OR OTHER LOCAL GOVERNMENTAL UNIT OR**
21 **QUASI-PUBLIC CORPORATION.**

22 **(II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,**
23 **THE DEATH BENEFIT PAID UNDER THIS SECTION SHALL BE REDUCED ON A**
24 **DOLLAR-FOR-DOLLAR BASIS BY ANY DEATH BENEFIT PAID ON BEHALF OF THE**
25 **DECEASED COVERED EMPLOYEE BY ANY RETIREMENT OR PENSION SYSTEM**
26 **RELATED TO THE EMPLOYMENT COVERED BY THE PRESUMPTION IN WHICH THE**
27 **DECEASED COVERED EMPLOYEE WAS A PARTICIPANT AT THE TIME OF DEATH.**

28 **(c) (1) DEATH BENEFITS SHALL BE PAID FOR A MINIMUM OF 5 YEARS**
29 **AFTER THE COVERED EMPLOYEE'S DEATH.**

30 **(2) SUBJECT TO SUBSECTIONS (D) THROUGH (H) OF THIS**
31 **SECTION, PROVIDED THAT A MINIMUM OF 5 YEARS OF DEATH BENEFITS HAVE**
32 **BEEN PAID, DEATH BENEFITS SHALL TERMINATE ON THE DATE THAT WOULD**
33 **HAVE BEEN THE DECEASED COVERED EMPLOYEE'S 70TH BIRTHDAY.**

34 **(D) NOTWITHSTANDING THE TIME LIMITATIONS UNDER SUBSECTIONS**
35 **(B) AND (C) OF THIS SECTION, IF A DEPENDENT SPOUSE OR DEPENDENT CHILD**
36 **IS INCAPABLE OF SELF-SUPPORT BECAUSE OF A MENTAL OR PHYSICAL**

1 DISABILITY THAT PREEXISTED THE COVERED EMPLOYEE'S DEATH, DEATH
2 BENEFITS SHALL CONTINUE FOR THE DURATION OF THE DEPENDENT'S
3 DISABILITY.

4 (E) IF A DEPENDENT SPOUSE REMARRIES, DEATH BENEFITS SHALL
5 TERMINATE 2 YEARS AFTER THE DATE OF REMARRIAGE.

6 (F) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE
7 PAYMENTS TO OR FOR THE BENEFIT OF A DEPENDENT CHILD UNTIL THE CHILD
8 REACHES 18 YEARS OLD.

9 (G) THE EMPLOYER OR ITS INSURER SHALL CONTINUE TO MAKE
10 PAYMENTS TO, OR FOR THE BENEFIT OF, A DEPENDENT CHILD FOR UP TO 5
11 YEARS AFTER THE CHILD REACHES 18 YEARS OLD IF:

12 (1) THE CHILD IS ATTENDING SCHOOL ON A FULL-TIME BASIS;
13 AND

14 (2) THE SCHOOL OFFERS AN EDUCATIONAL PROGRAM OR A
15 VOCATIONAL TRAINING PROGRAM THAT IS ACCREDITED OR APPROVED BY THE
16 STATE DEPARTMENT OF EDUCATION.

17 (H) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
18 SUBSECTION, ALL DEPENDENTS WHO ARE NEITHER A DEPENDENT SPOUSE NOR
19 A DEPENDENT CHILD SHALL BE ENTITLED TO NO MORE THAN A TOTAL OF
20 \$65,000, COLLECTIVELY, AS THEIR PORTION OF THE TOTAL DEATH BENEFITS
21 PAYABLE IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

22 (2) BEGINNING ON JANUARY 1, 2011, THE BENEFIT LIMIT UNDER
23 PARAGRAPH (1) OF THIS SUBSECTION SHALL BE ADJUSTED ANNUALLY BY THE
24 SAME PERCENTAGE APPLICABLE TO THE ADJUSTMENT OF THE STATE AVERAGE
25 WEEKLY WAGE.

26 [9-682.

27 (a) The employer or its insurer shall pay a death benefit in accordance with
28 this section if:

29 (1) there are no individuals who were wholly dependent on the
30 deceased covered employee at the time of death, but there are individuals who were
31 partly dependent; or

32 (2) a surviving spouse who was wholly dependent on the deceased
33 covered employee at the time of death becomes partly self-supporting.

1 (b) (1) The maximum weekly death benefit payable under this section
2 shall equal two-thirds of the average weekly wage of the deceased covered employee,
3 but may not exceed two-thirds of the State average weekly wage.

4 (2) The weekly death benefit payable under this section shall be the
5 percentage of the maximum weekly death benefit under paragraph (1) of this
6 subsection that:

7 (i) the weekly earnings of the deceased covered employee bears
8 to the combined weekly earnings of the deceased covered employee and the partly
9 dependent individuals; and

10 (ii) does not exceed the maximum weekly death benefit.

11 (c) Except as otherwise provided in this section, the employer or its insurer
12 shall pay the weekly death benefit:

13 (1) for the period of partial dependency; or

14 (2) until \$75,000 has been paid, including any payments made during
15 a period of total dependency under § 9-681 of this subtitle.

16 (d) (1) Subject to paragraph (2) of this subsection, if a surviving spouse
17 who is partly dependent remarries and does not have dependent children at the time
18 of the remarriage, the employer or its insurer shall make payments to the surviving
19 spouse for 2 years after the date of the remarriage.

20 (2) The total of the payments made before the remarriage may not
21 exceed \$75,000.

22 (e) (1) Except as provided in paragraphs (2) and (3) of this subsection, the
23 employer or its insurer shall continue to make payments to, or for the benefit of, a
24 surviving child until the child reaches 18 years of age.

25 (2) If a child who is 18 years old or older remains partly dependent on
26 the deceased covered employee, the employer or its insurer shall continue to make
27 payments in accordance with subsections (b) and (c) of this section.

28 (3) The employer or its insurer shall continue to make payments to, or
29 for the benefit of, a child who is 18 years old or older for up to 5 years after reaching
30 the age of 18 if:

31 (i) the child is attending school on a full-time basis; and

32 (ii) the school offers an educational program or a vocational
33 training program and the program is accredited or approved by the Maryland State
34 Department of Education.]

1 **9-682.**

2 **THE COMMISSION HAS CONTINUING JURISDICTION TO:**

3 **(1) SUSPEND, REALLOCATE, OR TERMINATE PAYMENTS OF**
4 **COMPENSATION IN ACCORDANCE WITH THIS PART; AND**

5 **(2) REINSTATE PAYMENTS OF COMPENSATION THAT HAVE BEEN**
6 **SUSPENDED OR TERMINATED UNDER THIS SECTION.**

7 9-683.

8 (a) If there are multiple dependents entitled to death benefits, the
9 Commission may apportion an award of death benefits among the dependents in the
10 manner that the Commission considers just and equitable.

11 [(b) If there are wholly and partly dependent individuals entitled to death
12 benefits, the Commission may:

13 (1) award the death benefits to the wholly dependent individuals only;
14 or

15 (2) apportion the award among the wholly and partly dependent
16 individuals in the manner that the Commission considers to be fair and equitable
17 under all of the facts and circumstances of the case.]

18 [(c) (B) (1) Death benefits shall be paid to 1 or more of the dependents
19 of a covered employee who are entitled to death benefits, as determined by the
20 Commission, for the benefit of all of the dependents who are entitled to death benefits.

21 (2) A dependent to whom death benefits are paid shall apply the death
22 benefits to the use of all of the dependents who are entitled to death benefits:

23 (i) according to the respective claims of the dependents on the
24 deceased covered employee for support; and

25 (ii) in compliance with the findings and direction of the
26 Commission.

27 9-689.

28 (a) The employer or its insurer shall pay reasonable funeral expenses of a
29 deceased covered employee, not exceeding [\$5,000] **\$7,000**, if the covered employee
30 died as a result of:

1 (1) an accidental personal injury, within 7 years of the accidental
2 personal injury; or

3 (2) an occupational disease.

4 (b) Unless approved by the Commission, a bill for funeral expenses of more
5 than ~~[\$5,000]~~ **\$7,000** is void and uncollectable out of:

6 (1) workers' compensation benefits payable with respect to the
7 deceased covered employee; or

8 (2) personal assets of any person to whom workers' compensation
9 benefits are payable with respect to the deceased covered employee.

10 (c) If there are no dependents, the employer[,] **OR** its insurer[, or the Injured
11 Workers' Insurance Fund, as appropriate,] shall pay the expenses of the last sickness
12 and [burial] **FUNERAL EXPENSES** of the covered employee.

13 SECTION 2. AND BE IT FURTHER ENACTED, That:

14 (a) The Workers' Compensation Commission shall reconvene the workgroup
15 of representatives of the various stakeholders that was established under Chapters
16 616 and 617 of the Acts of 2009 to study the death benefit provisions of the workers'
17 compensation law.

18 (b) (1) The Commission shall direct the workgroup to study the provisions
19 of the workers' compensation law that allow a reduction of workers' compensation
20 death benefits against the payment of a death benefit provided under a retirement or
21 pension system for a dependent of a covered employee of a governmental unit or a
22 quasi-public corporation.

23 (2) In studying the provisions specified in paragraph (1) of this
24 subsection, the workgroup shall determine whether the provisions provide fair and
25 equitable benefits to all dependents.

26 (c) On or before December 1, 2009, the Commission shall report, in
27 accordance with § 2-1246 of the State Government Article, the findings and any
28 recommendations of the workgroup to the Senate Finance Committee and the House
29 Economic Matters Committee.

30 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
31 be construed to apply only prospectively to deaths occurring on or after the effective
32 date of this Act and may not be applied or interpreted to have any effect on or
33 application to any death occurring before the effective date of this Act.

34 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
35 effect October 1, 2010.